

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**TERRY COCHRAN**

Plaintiff

v.

Case No. ELH-18-202

**DEPARTMENT OF HOMELAND  
SECURITY (DHS),  
FEDERAL EMERGENCY  
MANAGEMENT AGENCY (FEMA)**

Defendant

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR IN THE  
ALTERNATIVE FOR SUMMARY JUDGMENT**

Plaintiff Terry Cochran ("Cochran"), by and through her undersigned counsel, respectfully opposes Defendant's ("FEMA") Motion to Dismiss or in the Alternative for Summary Judgment ("Motion to Dismiss") pursuant to Rules 12(b)(1), 12(b)(6) and 56 of the Federal Rules of Civil Procedure for the following reasons:

Cochran argues that the premise of FEMA's Motion to Dismiss that all responsive records to her FOIA request for all "my Family & Medical Leave Act records from 1962-present" (*see* Exhibit 1 to Motion to Dismiss) have been produced is inaccurate. Rather, Cochran asserts that FEMA has failed to produce "any and all records pertaining to her treatment by psychologist Margaret Hayward". *See* Affidavit of Cochran at Exhibit 1 at ¶¶ 3-6; May 6, 2018 email of undersigned counsel to counsel for FEMA at Exhibit 2. Cochran had a pending EEO charge concerning harassment and a hostile work environment and FEMA and sought treatment as a result by Ms. Heyward. *See* Exhibit 1 at ¶ 3.

After service of the Motion to Dismiss, Cochran put together a list of documents responsive to her FOIA request that FEMA had not produced. *See* Exhibit 2. In response,

FEMA has failed to produce any responsive records pertaining to her treatment by Ms. Hayward. *See* Exhibit 1 at ¶ 5.

Cochran claims that FEMA has thus failed to produce all responsive documents to her FOIA request. The Court has subject matter jurisdiction because there is an existing case or controversy before the Court due to Cochran's evidence that FEMA has failed to produce all responsive documents. The instant case is not moot because of Cochran's evidence that FEMA has failed to produce all responsive documents. There is also a genuine dispute of material fact as to whether FEMA has produced all responsive documents, which renders summary judgment inappropriate.

WHEREFORE, Cochran requests that the Motion to Dismiss be DENIED.

Respectfully submitted,

/s/ Mark G. Chalpin

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*Attorney for Plaintiff Terry Cochran*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of June, 2018, a copy of the foregoing Opposition to Motion to Dismiss was served via CM/ECF to:

Stephen M. Schenning  
Acting United States Attorney  
Evelyn Lombardo Cusson  
Assistant United States Attorney  
United States Attorney's Office  
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/s/ Mark G. Chalpin  
Mark G. Chalpin, Esq.